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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/550,443	04/17/2000	Gordon Pack	081862.P174	1576

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EXAMINER

FERRIS, DERRICK W

ART UNIT PAPER NUMBER

2663

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/550,443

**Applicant(s)**

PACK ET AL.

**Examiner**

Derrick W. Ferris

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 5-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 5-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment*

1. **Claims 1, 3, and 5-15** as amended are still in consideration for this application.
2. Examiner does **not withdraw** the anticipated rejection to *Hoeneke* in view of *Thorne* (and depending rejections) for Office action filed **09/22/2004**. In complete response to applicant's arguments filed 12/27/2004, the examiner maintains the rejection since how many of the plurality of lines is in relation to available bandwidth as taught in the rejection using the output capacity spread over different lines. In addition, applicant fails to mention *how* the examiner appeared to misconstrue both the content and breadth of the teachings of *Hoeneke* since all applicant did was cite various passages of the reference without explaining *why* such passages were cited. The examiner would like to point out to applicant that applicant references how many lines are broken in the context of available bandwidth for the connection such that that actual number of lines broken is not used in the calculation but instead the available bandwidth is used, see e.g., applicant's specification at page 9, lines 11-21. Should applicant be arguing something else, please point the examiner to the correct figure and/or written description in applicant's specification such that the examiner can better understand the applicant's argument. As such, see DMAX used in the context of *Hoebeke* with respect to how many of the plurality of lines are broken.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1, 3, and 5-15** are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,898,670 A to *Hoebeke et al.* ("*Hoebeke*") in view of "ATM Technology Overview" to *Thorne*.

In making a proper obviousness rejection under MPEP 706.02(j), the examiner will address the following four steps:

- a) *the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line numbers where appropriate;*
- b) *the difference of differences in the claim(s) over the applied cited references;*
- c) *the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter; and*
- d) *an explanation why one skilled in the art at the time of the invention was made would have been motivated to make the proposed modification.*

As such to **claim 1**, for step (a) *Hoebeke* discloses detecting a change from a first bandwidth connection to a second bandwidth connection by monitoring DMAX. As various source inputs are multiplexed over a common channel, examiner notes a plurality of lines in light of applicant's specification, see e.g., column 4, lines 37-67. With respect to calculating the second bandwidth connection based on how many plurality of lines are broken, see e.g., column 6, lines 20-31. In particular, MMU monitors the output flow and is thus aware of potential changes such as broken lines since the bandwidth changes (i.e., examiner interprets broken lines as the available bandwidth (BW A) in view of applicant's specification, see e.g., applicant's specification at page 8, lines 5-15). In other words, applicant teaches monitoring the available bandwidth and not necessarily the actual number of lines, working or broken. Providing a second bandwidth via a feedback loop to a transmit rate selector is taught as part of signal OFRI. Each ISD is responsible

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for computing bandwidth transmissions. As such, each ISN has an associated queue in reference to queuing data cells.

For step (b) *Hoebeker* is silent or deficient to the further limitation queuing first data cells having fixed transmission rates and first data cells having variable transmission rates. In particular, although ABR is disclosed in the embodiment, see e.g., column 3, lines 55-60, other classes of service are used, see e.g., column 6, line 63-column 7, line 8. Thus *Hoebeker* also discloses VBR or variable transmission rates. Thus not expressly disclosed are fixed transmission rates or CBR.

*Thorne* teaches the further recited limitation above at e.g., Section 2.3.6 on page 1/3.

For step (c), the proposed modification of the above-applied reference(s) necessary to arrive at the claimed subject matter would be to modify *Hoebeker* by including CBR traffic or fixed transmission rates.

In order to establish a prima facie case of obviousness for step (d), three basic criteria must be met. The three criteria according to MPEP 706.02(j) are as follows:

*First there must be some suggestion or modification, either in the reference(s) themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.*

As such, for step (d) examiner notes that it would have been obvious to one skilled in the art prior to applicant's invention to include the further limitation fixed and variable transmission rates. In particular, the motivation for modifying the reference or to combine the reference teachings would be to offer different classes of services. In

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particular, *Thorne* cures the above-cited deficiency by providing a motivation found at e.g., 2.3.6 on page 1/3. Second, there would be a reasonable expectation of success since *Hoebeke* teaches that other classes of service are supported, see e.g., column 7, lines 1-6. Thus the references either in singular or in combination teach the above claim limitation(s).

As to **claim 3**, QoS is maintained dynamically, see e.g., column 6, lines 20-36 of *Hoebeke*.

As to **claim 5**, QoS is preserved as part of class of service, see e.g., column 7, lines 1-6 of *Hoebeke*.

As to **claims 6-7**, see similar rejection to claim 1.

As to **claim 8**, see similar rejection to claim 2.

As to **claim 9**, see similar rejection to claim 1.

As to **claim 10**, see similar rejection to claim 5.

As to **claims 11-12**, see similar rejection to claim 1. In addition, examiner notes that it would have been obvious to one skilled in the art prior to applicant's invention to incorporate the hardware and software proposed by *Hoebeke* into computer instructions as part of a design decision.

As to **claim 13**, see similar rejection to claim 2.

As to **claim 14**, see similar rejection to claim 1.

As to **claim 15**, see similar rejection to claim 5.

### ***Conclusion***

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5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Derrick W. Ferris whose telephone number is (571) 272-3123. The examiner can normally be reached on M-F 9 A.M. - 4:30 P.M. E.S.T.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Ngo can be reached on (571)272-3139. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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DWF

Derrick W. Ferris  
Examiner  
Art Unit 2663

  
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